IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.469 OF 2005

IN

SUIT NO.4913 OF 2000

Majid A. Ommerbhoy. ... Plaintiff.

vs.

Rashid A. Oomerbhoy & others. .... Defendants.

And

Mohd. Amin M. Esmail ...Applicant.

Ms.Clandra Sonpal i/b. Thakore Jariwala & Associates, for Plaintiff.

Ms.Deepa Mani i/b. S.K.Srivastava & Co., for Defendant no.1.

Mrs.Neeta Karnik, for applicant in support.

CORAM: D.K.DESHMUKH,J.

DATED: 17th March,, 2006

P.C.:-

1. By this notice of motion, the applicant who is not a party to the suit is claiming following relief:-

> "(a) That this Honourable Court be pleased to (i) hold that the flat No.1/121 situated at Park View Co-

operative Housing Society, 3rd floor, Yari Road, Versova, Mumbai 400061 does not belong to the Defendant no.5, (ii) delete the same from the list of properties owned by the Defendant no.5, (iii) direct the Court Receiver to act accordingly by removing its symbolic possession thereupon;"

It is clear from the above quoted prayer clause that the applicant, in substance, is seeking decree of declaration that the flat mentioned in the above quoted prayer clause is not owned by defendant no.5. Surely, such declaration cannot be granted in the notice of motion taken out by the present applicant who is not even a party to the suit, as an interim order. The notice of motion is totally misconceived. The notice of motion is, therefore, disposed of. The applicant is directed to pay cost of this notice of motion to the plaintiff. The cost is quantified at Rs.5000/-.